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**IN THE
INDIANA TAX COURT**

HUBLER REALTY COMPANY,)	
)	
Petitioner,)	
)	
v.)	Cause No. 49T10-0107-TA-72
)	
DEPARTMENT OF LOCAL)	
GOVERNMENT FINANCE, ¹)	
)	
Respondent.)	
)	

ON APPEAL FROM A FINAL DETERMINATION OF
THE STATE BOARD OF TAX COMMISSIONERS

¹ The State Board of Tax Commissioners (State Board) was originally the Respondent in this appeal. However, the legislature abolished the State Board as of December 31, 2001. 2001 Ind. Acts 198 § 119(b)(2). Effective January 1, 2002, the legislature created the Department of Local Government Finance (DLGF), see Indiana Code § 6-1.1-30-1.1 (West Supp. 2004-2005)(eff. 1-1-02); 2001 Ind. Acts 198 § 66, and the Indiana Board of Tax Review (Indiana Board). IND. CODE ANN. § 6-1.5-1-3 (West Supp. 2004-2005)(eff. 1-1-02); 2001 Ind. Acts 198 § 95. Pursuant to Indiana Code § 6-1.5-5-8, the DLGF is substituted for the State Board in appeals from final determinations of the State Board that were issued before January 1, 2002. IND. CODE ANN. § 6-1.5-5-8 (West Supp. 2004-2005)(eff. 1-1-02); 2001 Ind. Acts 198 § 95. Nevertheless, the law in effect prior to January 1, 2002 applies to these appeals. A.I.C. § 6-1.5-5-8. See also 2001 Ind. Acts 198 § 117. Although the DLGF has been substituted as the Respondent, this Court will still reference the State Board throughout this opinion.

NOT FOR PUBLICATION

July 1, 2005

FISHER, J.

Hubler Realty Company (Hubler) appeals the final determination of the State Board of Tax Commissioners (State Board) valuing its real property for the 1995 assessment year. The issue on appeal is whether the State Board erred in not applying the General Commercial Kit (GCK) pricing schedule to Hubler's improvement.² For the following reasons, the Court now AFFIRMS the State Board's action.

FACTS AND PROCEDURAL HISTORY

Hubler owns an automobile sales and service facility in Marion County, Indiana. For the 1995 tax year, the Perry Township Assessor (Assessor) valued the Auto Service Center (subject improvement) based on the General Commercial Mercantile pricing schedule.

Hubler filed a Petition for Review of Assessment (Form 130) with the Marion County Board of Review (BOR), claiming that its improvement should have been priced using the GCK model. The BOR sustained the Assessor's valuation. Hubler then filed a Petition for Review of Assessment (Form 131) with the State Board. The State Board held an administrative hearing on the petition and subsequently issued its final determination on July 12, 2001, denying Hubler's request for relief.

² Hubler raised three additional issues in its petitions to the BOR and State Board, which were not presented to this Court on appeal. As an alternative to GCK pricing, Hubler requested that the State Board lower the grade of its improvement. Nonetheless, Hubler seems to have abandoned this request since it never presented evidence or arguments to the State Board or to this Court as to the claim. (See Stip. R. at 30-31, 34.) (See *also* Pet'r Br. at 1.) Accordingly, the Court will not entertain the issue now.

Hubler initiated an original tax appeal on July 23, 2001. In lieu of a trial, both parties agreed to have the case resolved on the basis of their briefs and the stipulated administrative record. The Court heard the parties' oral arguments on November 12, 2002. Additional facts will be supplied as necessary.

ANALYSIS AND OPINION

Standard of Review

This Court gives great deference to the final determinations of the State Board when it acts within the scope of its authority. *Hamstra Builders, Inc. v. Dep't of Local Gov't Fin.*, 783 N.E.2d 387, 390 (Ind. Tax Ct. 2003). Thus, this Court will reverse a final determination of the State Board only when its findings are unsupported by substantial evidence, arbitrary, capricious, constitute an abuse of discretion, or exceed statutory authority. *Id.*

Discussion

Hubler asserts that the State Board's final determination that the improvement does not qualify for GCK pricing should be reversed because it is unsupported by substantial evidence. When appealing to this Court from a State Board final determination, the taxpayer bears the burden of showing that the final determination is invalid. *Id.* Therefore, the taxpayer must present a prima facie case (a case in which the evidence is "sufficient to establish a given fact and which if not contradicted will remain sufficient"). *GTE North Inc. v. State Bd. of Tax Comm'rs*, 634 N.E.2d 882, 887 (Ind. Tax Ct. 1994) (citations and internal quotation marks omitted). To establish a prima facie case, the taxpayer must offer probative evidence concerning the alleged assessment error. *See King Indus. Corp. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 338,

343 (Ind. Tax Ct. 1998); *Whitley Prods., Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998), *review denied*. “Once the taxpayer carries the burden of establishing a prima facie case, the burden shifts to the State Board to rebut the taxpayer's evidence and justify its decision with substantial evidence.” *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1233 (Ind. Tax Ct. 1998).

Hubler was required to prove that its improvement should have been assessed under the GCK model. The GCK pricing schedule is used for “valuing preengineered and predesigned pole buildings which are used for commercial and industrial purposes.” IND. ADMIN. CODE tit. 50, r. 2.2-10-6.1(a)(1)(D) (1996).³ The GCK schedule “value[s] the base building on a perimeter area ratio basis and adjust[s] the value based on the various individual components of the building.” *Id.* However, “[b]uildings classified as a special purpose design are not valued using the GCK pricing schedule.” *Id.* While these regulations provide little guidance, the taxpayer needs to do more than simply describe its structure to the State Board to establish a prima facie case. Instead, taxpayers must link the features in their improvement to the features in the provisions of the regulations.

For instance, this Court has previously held that a taxpayer sufficiently established a prima facie case by comparing the features of its improvement with those listed in the regulations. See *LDI Mfg. Co. v. State Bd. of Tax Comm'rs*, 759 N.E.2d 685, 688 (Ind. Tax Ct. 2001). In *LDI*, the taxpayer presented evidence indicating that its structure contained several of the components listed in the regulations. See *id.* In addition, the taxpayer presented a proposed property record card demonstrating how its

³ The GCK base rates are located in Indiana Administrative Code, title 50, regulation 2.2-11-6, Schedule A.4.

base rate would be calculated under the GCK schedule and accounted for other various features. *See id.*

Similarly, in *Morris v. State Bd. of Tax Comm'rs*, 712 N.E.2d 1120, 1122-23 (Ind. Tax Ct. 1999), the taxpayer established a prima facie case where, among other things, it provided testimony explaining how the structure's features affected its reproduction cost. While taxpayers are not required to present the evidence highlighted in the aforementioned cases, "where there is little guidance on what kinds of evidence are to be considered, prudent litigants would err on the side of offering more evidence rather than less evidence." *Clark*, 694 N.E.2d at 1239 n.13.

To support its claim, Hubler presented the following evidence: (1) an affidavit of a licensed general contractor; (2) the testimony of its tax consultant, Milo Smith; (3) photographs; and (4) a photocopy of the Tax Court decision in *Morris*, along with the corresponding State Board final determination and photographs in that case. (See Oral Argument Tr. at 3; Pet'r Br. at 2-3.) (See also Stip. R. at 45-73, 98-113.) As the Court will explain, however, this evidence does not constitute a prima facie case.

(1)

Hubler presented the affidavit of Mr. Douglas Sweeney, a licensed general contractor. The affidavit states:

the structure is a predesigned[,] pre-engineered building assembled in 1964 [and] is now priced as "Auto Showroom" (4,416 sq. ft.), "General Office" (3,220 sq. ft.), "Auto Service" (21,298 sq. ft.) and "Utility Storage" (6,002 sq. ft.) with some non-load bearing concrete block walls (one 52' long section is 6' high, while the remainder is 4' high) with 620 sq. ft. of common brick plus four (4) hollow brick columns constructed to hide the pre-engineered steel posts. [] [T]he subject "Auto Service" (21,298 sq. ft.) area is unfinished, with only a 5' high light weight metal interior wall liner, painted floor, a

1,920 sq. ft. non load bearing interior concrete block wall and is heated with small hanging unit heaters.

(Stip. R. at 45.)

While the affidavit describes the features of the facility, it does not describe how the features compare with those listed in the GCK schedule. *See CDI, Inc. v. State Bd. of Tax Comm'rs*, 725 N.E.2d 1015, 1020 (Ind. Tax Ct. 2000) (stating that taxpayer did not provide the Court with any insight as to why the structure should be classified as a kit building, but only stated it was pre-engineered and had certain features). As part of establishing a prima facie case, Hubler had a “duty to walk the [State Board and this] Court through every element of [its] analysis.” *Clark v. Dep’t of Local Gov’t Fin.*, 779 N.E.2d 1277, 1282 n.4 (Ind. Tax Ct. 2002). Hubler cannot assume that the evidence speaks for itself. *See id.*

(2)

During the administrative hearing, Hubler also presented the testimony of its tax consultant, Mr. Milo Smith.⁴ Smith testified that “[t]he building with the Showroom and Auto Service area is pre-engineered metal[,]” and that it has steel beams and posts. (See Stip. R. at 101.) Similar to the statements in the affidavit, this testimony does not demonstrate *why* the structure should be assessed utilizing the GCK schedule. *See CDI*, 725 N.E.2d at 1020.

⁴ Mr. Smith’s testimony at the administrative hearing was very difficult to discern as it consisted of a mixture of references to a drawing of the structure (not included in the record), a review of Mr. Sweeney’s affidavit, and Mr. Smith’s own comments and conversation with the hearing officer and township assessor. (See Stip. R. at 101-102.) Despite Hubler’s claim that this testimony aids in establishing a prima facie case, the review of the affidavit especially lacks probative value regarding the building’s pricing. (See Oral Argument Tr. at 3; see also Pet’r Br. at 2-3.)

(3)

Hubler relied on photographs in its brief to this Court, asserting that the structure had a low-pitched roof. (See Pet'r Br. at 3.) Even so, Hubler failed to explain (to the State Board) what was depicted in the photograph or how a low-pitched roof affects the structure's pricing under the GCK schedule. (See Stip. R. at 34, 82.) "[T]his Court has [previously] rejected attempts by taxpayers to put forth evidence such as photographs without explanations," and the Court will not now depart from this practice. *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999) (citations omitted).

(4)

Finally, Hubler submitted photocopies of both the Tax Court decision and State Board final determination in the *Morris* case, in which the Court held an auto showroom and service center qualified for a kit building classification. (See Stip. R. at 50-73.) See also *Morris*, 712 N.E.2d at 1120. Nevertheless, these documents do not tend to prove that *Hubler's* property should be assessed using the GCK pricing schedule. Hubler needed to present probative evidence concerning *its* structure and features instead of assuming that the facts of *Morris* would suffice.

CONCLUSION

Collectively, Hubler's evidence merely describes the structure. Hubler was required to link the features of its improvement to those listed in the regulations. Accordingly, Hubler did not present a prima facie case and the burden, therefore, never shifted to the State Board to support its decision with substantial evidence. See *Clark*,

694 N.E.2d at 1233. For the foregoing reasons, the Court AFFIRMS the State Board's final determination.